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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,993	04/13/2004	Douglas B. Macrae	IS-105 Cont.	5005

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EXAMINER	
INGVOLDSTAD, BENNETT	
ART UNIT	PAPER NUMBER
2427	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/823,993	MACRAE ET AL.	
	Examiner	Art Unit	
	Bennett Ingvoldstad	2427	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 January 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5 and 7-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5 and 7-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25 January 2010 has been entered.

Response to Arguments

Applicant's arguments filed 25 January 2010 have been fully considered but they are not persuasive. Applicant argues that Chaney is not combinable with Youman and Glaab because Chaney updates program listings in response to program guide information sent from a service provider, in contrast to the claimed method of updating based on an indication from the detector. Remarks at 8. Although the examiner agrees that Chaney's EPG may be modified at the service provider rather than at the client, the claims are not specific as to whether the modification takes place at the headend or the client. Further, one of ordinary skill would recognize that Chaney's method of modifying a program guide to indicate a "Free Preview" listing could be performed by either the headend or the client, based on whichever device had information indicating that a scrambled channel was being displayed in a preview mode. Thus Chaney's service

provider provides the updated program listing, because the service provider is aware of the free preview. In combination with Youman and Glaab, however, the client device is also aware of the free preview mode through Glaab's scrambling detector, and thus the client device in the combination could update the program listing.

Applicant argues that Chaney's "Free Preview" listing is for a future showing, which is still scrambled, so Glaab's detector cannot detect an unscrambled signal and modify a listing for a future showing. Remarks at 8. Although the examiner agrees that Chaney's illustration of the "Free Preview" listing is for a future showing, Chaney further illustrates that listings for current showings may be displayed as well. See Fig. 3. Thus, one of ordinary skill would recognize that a "Free Preview" listing could be displayed for a current show as well as or alternatively to a future showing, and thus would be able to modify the listing to accommodate the combination, updating the listing at the time the channel is detected to be unscrambled as taught by Glaab.

Applicant argues that Glaab's detector only monitors signals that are unscrambled and provides indications only of scrambled signals, in contrast to the claims. Remarks at 9. The examiner disagrees and points to Figure 4 of Glaab, which illustrates that Glaab may monitor a channel 100 before scrambling is detected or not 102. Thus Glaab may monitor either scrambled or unscrambled channels, and the detector indicates whether the signals are scrambled or not via decision 102.

Therefore, the arguments are unpersuasive, and the previous rejections are maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5, and 7–22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5629733 ("Youman") in view of US 6381332 ("Glaab"), cited in the IDS dated 16 February 2006, and US 5841433 ("Chaney"), also cited in the IDS dated 16 February 2006.

1. Youman teaches a schedule system configured with an EPG comprising a receiving location for receiving scrambled and unscrambled channels (Figs. 9, 10: premium channels such as HBO are scrambled so that non-subscribers cannot tune in) and a processor configured to display program listings (see e.g. Fig. 18). Youman further teaches that regularly scrambled channels may occasionally be unscrambled (see Fig. 28A "Free HBOPreview Tonight"). Youman does not teach a detector as claimed.

Glaab teaches a system for monitoring scrambled channels comprising a detector for detecting 102 whether a channel is scrambled and determining based on an indication from the detector that the channel is received without scrambling. Fig. 4.

Since Youman teaches that regularly scrambled channels may occasionally be unscrambled (Fig. 28A), it would have been obvious to have implemented Glaab's

monitoring system into the system of Youman for the purpose of detecting when the scrambled channels are unscrambled.

However, Youman in view of Glaab still does not teach modifying the displayed program listing associated with the regularly scrambled channel when it is received without scrambling.

Chaney teaches a modified program listing for a regularly scrambled channel to indicate that a channel is received without scrambling (Fig. 3: see "Free Preview" listing for HBO 102).

It would have been obvious to modify the program listings of Youman in view of Glaab to indicate the unscrambled status of a regularly scrambled channel as taught by Chaney for the purpose of drawing the viewer's attention to the promotions put forth by the scrambled channels.

2. Youman further discloses that selecting a program listing (such as a modified listing) may turn on a channel (Fig. 9: tune to the channel).

5. Youman in view of Glaab and Chaney teaches modifying listings when it is detected that the channel is unscrambled (Youman Figs. 9, 28A; Glaab Fig. 4; Chaney Fig. 3).

7. Youman further teaches a display for displaying a portion of the program listings in a guide format (see Youman Figs. 6, 8, 18, 19, 20, 25 for example displays).

8. Youman further teaches displaying a promotional message in the guide for informing a viewer that the second television channel (one of the regularly scrambled

television channels) is unscrambled (see Youman Fig. 28A where "Free HBO tonight" is a promotional message of a regularly scrambled channel).

9. Youman further teaches that the promotional message is visually distinguished from the program listings associated with the television channel that provides regularly unscrambled television programs of (see Youman Fig. 28, where the promotional messages are separated from other info on the display).

10. Youman further teaches that the portion of the display including the second program listing is displayed upon user selection of the promotional message (see Youman Fig. 28A with selectable promotional message "Free HBO Preview Tonight" and Figs. 9, 10, and 18 showing the listing for scrambled channels).

11. Youman further teaches adding the second television channel into a list of displayed channels (see Youman Figs. 9, 10, 18, which show the listings for regularly scrambled channels comprising the second television channel).

12. Youman further teaches transmitting an order to subscribe the user to a service provider of the second television channel (see Youman Fig. 26 requesting subscription to a movie or special event or family programming, and Fig. 9 to order the HBO channel; Fig. 10; Figs. 23-24a show the process of subscribing to a channel to watch a movie).

13. Youman teaches a schedule method configured with an EPG comprising a receiving location for receiving scrambled and unscrambled channels (Figs. 9, 10: premium channels such as HBO are scrambled so that non-subscribers cannot tune in) and a processor configured to display program listings (see e.g. Fig. 18) and determine

that the scrambled channel is received without scrambling by a user that is a non-subscriber to the channel (Fig. 28A: in order to display a “Free HBOPreview Tonight” promotional message). Youman does not teach a detector as claimed.

Glaab teaches a system for monitoring scrambled channels comprising a detector for detecting 102 whether a channel is scrambled and determining based on an indication from the detector that the channel is received without scrambling. Fig. 4.

Since Youman teaches that regularly scrambled channels may occasionally be unscrambled (Fig. 28A), it would have been obvious to have implemented Glaab’s monitoring system into the system of Youman for the purpose of detecting when the scrambled channels are unscrambled.

However, Youman in view of Glaab still does not teach modifying the displayed program listing associated with the regularly scrambled channel when it is received without scrambling.

Chaney teaches a modified program listing for a regularly scrambled channel to indicate that a channel is received without scrambling (Fig. 3: see "Free Preview" listing for HBO 102).

It would have been obvious to modify the program listings of Youman in view of Glaab to indicate the unscrambled status of a regularly scrambled channel as taught by Chaney for the purpose of drawing the viewer’s attention to the promotions put forth by the scrambled channels.

14. Youman further discloses that selecting a program listing (such as a modified listing) may turn on a channel (Fig. 9: tune to the channel).

15. Youman in view of Chaney further teaches detecting a program listing modification message in order to display it (Youman Fig. 28A) and indicate a program as a Free Preview (Chaney Fig. 3).

16. Youman further teaches that the processor receives data from a service provider indicating the periods during which one of the regularly scrambled television channels will be unscrambled (see Youman, Figs. 28 and 28A, HBO will become available "tonight" or "this weekend"; i.e., in the future, implying a message from the service provider).

17. Youman further teaches a display for displaying a portion of the program listings in a guide format (see Youman Figs. 6, 8, 18, 19, 20, 25 for example displays).

18. Youman further teaches displaying a promotional message in the guide for informing a viewer that the second television channel (one of the regularly scrambled television channels) is unscrambled (see Youman Fig. 28A where "Free HBO tonight" is a promotional message of a regularly scrambled channel).

19. Youman further teaches that the promotional message is visually distinguished from the program listings associated with the television channel that provides regularly unscrambled television programs of (see Youman Fig. 28, where the promotional messages are separated from other info on the display).

20. Youman further teaches that the portion of the display including the second program listing is displayed upon user selection of the promotional message (see Youman Fig. 28A with selectable promotional message "Free HBO Preview Tonight" and Figs. 9, 10, and 18 showing the listing for scrambled channels).

21. Glaab further teaches that the detector monitors channels that may be either scrambled or unscrambled (see 102, Fig. 4).

22. Glaab further teaches that the detector decides, and thus indicates, whether a television channel is received without scrambling (see 102, Fig. 4).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bennett Ingvoldstad whose telephone number is (571) 270-3431. The examiner can normally be reached on M–F 9–5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bennett Ingvoldstad/
Examiner, Art Unit 2427

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427